IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3094 of 2005
Date of decision:9.10.2006

Aameet Puri

....Petitioner

versus

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjiv Bansal, Advocate.
Mr. Sanjeev Kaushik, Advocate.

JUDGMENT:

1. This judgment will dispose of CWP No.3094 and 5617 of 2005.

2. The petitioners seek quashing of demand of service tax on the ground that service tax was not leviable on 'Multi System Operator' (MSO). Averments in CWP No.3094 of 2005 may be first noticed.

3. Respondent No.3 is Multi System Operator providing TV signal to the petitioner and other cable operators, who in turn provide cable services to residents. Service tax is leviable under the provisions of the Finance Act 1994 (Act 32 of 1994) as amended by Finance Act 2002 w.e.f 16.8.2002. Respondent No.3 informed the petitioner that with effect from 10.9.2004, Central Excise Department has claimed service tax as per communication dated 18.2.2005. Letter of respondent No.3, Annexure P.2 is reproduced below:-

> "As a Multi System Operator, we are providing signal to you and as a consequence thereof you have been rendering your cable operator business in the area of Sectors-11, 12, 12-A and 14, Panchkula . As per the earlier circular/notification, only the cable operator providing services to the consumers were liable to pay the service tax, which you have been paying, as brought to our notice.
>
> However, now the Central Excise Department is

> claiming that w.e.f. 10.09.2004, Multi System Operator is also liable to pay the service tax in relation to the cable services in his capacity as a Multi System Operator. We are enclosing herewith for your information the communication in this regard dated 18.02.2005 of the service tax department.
>
> In light of the above, we hereby intimate that service tax @ 10.2% would be charged upon you on the bills raised by us for providing TV signals. You are called upon to deposit the due service tax on or before 21.02.2005.
>
> You are requested to make the arrangements for payment thereof. This intimation is being sent to you in light of the communication issued by the Service Tax Department dated 18.02.2005."

Letter dated 18.2.2005 of the Excise department is as under:-

> "It has been found that you have not deposited service tax w.e.f. 10.09.2004 in respect of cable services rendered to the cable operators as an MSO. The service tax is required to be paid @ 10% plus education cess @ 2% on the amount collected from your clients i.e. cable operators. In addition to this you are also required to pay service tax on advertisement service w.e.f. 16.07.2001 under the category of broadcasting services."

4. In CWP No.5617 of 2005, identical averments have been made except that the petitioners themselves are Multi system Operators.

5. Section 65(105) of Act 32 of 1994 defines "taxable service" as services specified therein. Clause (zs) specifies services "to a consumer, by a cable operator in relation to cable services". The words "to a consumer by a cable operator", were substituted by Finance Act 2004 w.e.f 10.9.2004 by the words "to any person by a cable operator including a Multi System Operator".

6. Contention raised on behalf of the petitioners is that for levy of service tax, it was necessary that services must be provided "to any person, by a cable operator including a Multi System Operator". It was submitted that Multi System Operator was not providing services to the consumer but only to cable operators whereas service tax is leviable when services are

provided by a cable operator and not to a cable operator.

7. In the reply filed on behalf of the Commissioner Central excise Service Tax, it is submitted that since w.e.f 10.9.2004, "taxable service" has been re-defined to mean service provided to "any person", it was not necessary that the cable operator must be providing services to "any customer". Definition of "cable service" under section 65(22) is as per definition under section 2(b) of the Cable Television Networks (Regulation) Act, 1995 which is:

> "cable service means transmission by cables of programmes including retransmission by cable of any broadcast Television signals."

7.1 Thus, the said definition also includes services provided by "Multi System Operator". It is further pointed out that there is no system of double burden as CENVAT Credit Rules have been applicable to give credit of the amount of service tax on the input by MSO which can be utilised on output services by cable service providers to the viewers.

8. We have considered the rival submissions and perused the record.

9. In view of clear definition of "service" as "service to any person" by a cable operator including "a Multi System Operator", contention raised on behalf of the petitioners that Multi System Operator was not liable to pay service tax, unless service was rendered to a viewer or consumer, has no merit. Similarly, contention that service tax is required to be paid twice on the same service is also without any merit, in view of the stand taken on behalf of the State in the written statement to the effect that in terms of CENVAT Credit Rules, 2004, credit of the service tax paid on input services is available while paying service tax on output services. The same is also supported by circular No.F.No.B2/8/2004-TRU dated 10.9.2004, para 29.

10. Accordingly, both the writ petitions are dismissed.

(Adarsh Kumar Goel)
Judge

Oct.09, 2006 (Rajesh Bindal)
'gs' Judge